TAMIL NADU STATE JUDICIAL ACADEMY

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IMPORTANT CASE LAW

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SUPREME COURT CIVIL CASES

2019 (3) MWN(Civil) 431

Jagdish Prasad Patel (Dead) through L.Rs & another & Shivnath & others

Date of Judgment: 09.04.2019

Code of Civil Procedure, 1908 (5 of 1908), Order 41, Rule 27 – Additional Evidence – Receiving of, at appellate stage – when document sought to be marked has direct bearing on main issue in Suit, same must be received in interest of justice.

Under Order 41, Rule 27 C.P.C., production of additional evidence, whether oral or documentary, is permitted only under three circumstances which are:

1. Where the trial court had refused to admit the evidence though it ought to have been admitted;
2. The evidence was not available to the party despite exercise of due diligence; and
3. The appellate Court required the additional evidence so as to enable it to pronounce Judgment or for any other substantial cause of like nature.

An application for production of additional evidence cannot be allowed if the appellant was not diligent in producing the relevant documents in the Lower Court. However, in the interest of justice and when satisfactory reasons are given, Court can receive additional documents.

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2019 (6) CTC 85

Ganesan(D) through LRs vs. Kalanjiam & others

Date of Judgment: 11.07.2019

Indian Succession Act, 1925 (39 of 1925), Section 63(c) – Will –Registered Will – Presumption – Suspicious circumstances – Proof of Will – Attesting Witnesses not signed together in presence of Testator – Will was not signed by Testator in presence of Attesting Witnesses – Genuineness of Will.

The Appeals raise a pure question of law with regard to the interpretation of Section 63 (c) of the Act. The signature of the Testator on the Will is undisputed. Section 63(c) of the Succession Act requires an acknowledgement of execution by the Testator followed by the attestation of the Will in his presence. The provision gives certain alternatives and it is sufficient if conformity to one of the alternatives is proved. The acknowledgement assume the form of express words or conduct or both, provided they unequivocally prove an acknowledgement on part of the Testator. Where a Testator asks a person to attest his Will, it is a reasonable inference that he was admitting that the Will had been executed by him. There is no express prescription in the statute that the Testator must necessarily sign the Will in presence of the attesting witnesses only or that the two attesting witnesses must put their signatures on the Will simultaneously at the same time in presence of each other and the Testator.

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2019 (6) CTC 88

Sopan(Dead) through his LRs vs.Syed Nabi

Date of Judgment: 16.07.2019

Transfer of Property Act, 1882(4 of 1882, Section 58(c) – Mortgage by conditional sale – essential ingredients – Distinction between sale and mortgage by conditional sale – Sale with mere condition or reconveyance is not mortgage – Plaintiff sold suit property by registered sale deed without any condition for reconveyance - Suit instituted for redemption of mortgage is improper.

Suit instituted for redemption of Mortgage is improper. The Plaintiff instituted suit for redemption of Mortgage. The pleaded case of the plaintiff is that he has sold the suit property by a registered sale deed in September 1968 in favour of the Defendant. A separate agreement was entered between the parties whereby the Plaintiff has agreed to repay his loan amount and secure reconveyance of the property. The plaintiff has issued a legal notice in September 1980 by treating the transaction as mortgage by conditional sale for reconveyance of property upon payment of Mortgage dues.

A sale with a mere condition of retransfer is not a Mortgage. It is further held therein that keeping in view the proviso to Section 58(c) if the sale and agreement to repurchase are embodied in separate documents then the transactions cannot be a mortgage by conditional sale irrespective of whether the documents are contemporaneously executed. It is further held therein that even in the case of a single document the real character of the transaction is to be ascertained from the provisions of the deed viewed in the light of the surrounding circumstances and intention of the parties.

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2019 (6) CTC 71

Shamsher Singh & another vs. Lt.Col.Nahar Singh(D) through LRs & others

Date of Judgment :29.07.2019

Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rules 98,99 & 100 – Execution – Dispossession by Decree holder – Remedy – Question to be determined – Decree for Specific Performance – Decree holder secured possession through process of Court – Obstructor claiming right upon suit property by Adverse Possession – Dispossession of Obstructor in execution of Decree – scope of.

There is a marked difference between Rule 101 as it existed prior to amendment and as it now exists after 1976 amendment. Earlier a person, who was a bona fide claimant and who satisfied that he was in possession of the property on his own account or on account of some other person then the judgment-debtor could have been put in possession of the property on a application under Rules 100 & 101; whereas now after the amendment for putting back into possession applicant has not only to prove that he is in bona fide possession rather he has to prove his right, title or interest in the property. What was earlier to be adjudicated in a suit under unamended Rule 103 is now to be adjudicated in Rule 101 itself, thus, for being put in possession, an applicant has to prove his right, title or interest in the property and by simply proving that he was in possession prior to the date he was dispossessed by Decree-holder, he is not entitled to be put back in possession.

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2019 (7) MLJ 495 (SC)

Raja Ram vs. Jai Prakash Singh & others

Date of Judgment: 11.09.2019

Contract – Undue Influence – Burden of proof – Suit filed Plaintiffs/brothers alleging that defendants obtained sale deed from their father prior to death, in favour of 1st Defendant/wife of 2nd defendant/brother fraudulently, by deceit and undue influence.

Whether defendants exercised undue influence over deceased in having sale deed executed in favour of 1st Defendant because of physical infirmity of deceased on account of his old age.

The pleadings in the plaint are completely bereft of any details or circumstances with regard to the nature, manner or kind of undue influence exercised by the original defendants over the deceased. The deceased was not completely physically and mentally incapacitated. There can be no doubt that the original defendants were in a fiduciary relationship with the deceased. Their conduct in looking after the deceased and his wife in old age may have influenced the thinking of the deceased. But that per se cannot lead to the only irresistible conclusion that the original defendants were therefore in a position to dominate the Will of the deceased or that the sale deed executed was unconscionable.

The deceased had acknowledged receipt of the entire consideration in presence of the sub-registrar only after which the deed was executed and registered. The sale deed being a registered instrument, there shall be a presumption in favour of the defendants. The onus for rebuttal lay on the plaintiff which he failed to discharge.

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2019 (7) MLJ 697 (SC)

Brijesh Kumar & others vs. Shardabai (Dead) by Lrs. And Others

Date of Judgment: 01.10.2019

Property Laws – Adverse Possession – Burden of Proof – Whether Plaintiff established peaceful, open and continuous possession demonstrating wrongful ouster of rightful owner. The Plaintiff claimed adverse possession for thirty years prior to filing of suit. The lands were sold to 9th defendant before the expiry of 12 years and she was put in possession. The Plaintiff's claim of uninterrupted possession for twelve years was therefore unsustainable as completely devoid of substance. The Plaintiff was seeking to deny the rights of the true owner. The onus therefore lay upon the Plaintiff to establish possession as a fact coupled with that it was open, hostile and continuous to the knowledge of the true owner. The Plaintiff failed to discharge the onus.

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SUPREME COURT CRIMINAL CASES

2019 (2) SCC (Crl) 665

Parkash Chand vs. State of Himachal Pradesh

Date of Judgment:12.02.2019

Indian Penal Code, 1860 – Sections 376 and 506 – Rape and intimidation alleged – delay in FIR – extra-judicial confession – credibility of prosecutrix – prosecution not able to prove case beyond reasonable doubt.

There is admittedly a delay of 7 months in lodging the FIR in the case of alleged rape. If the case is reported immediately apart from the inherent strength of the case flowing from genuinesess attributable to such promptitude, the perceptible advantage would be the medical examination to which the prosecutrix can be subjected and the result of such examination in a case where there is resistance. It is the case of the prosecution that she raised hue and cry and therefore apparently she would have resisted. Possibly, a medical examination may have revealed signs of any resistance or injuries.

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2019 (2) SCC(Crl) 571

Basalingappa vs. Mudibasappa

Date of Judgment:09.04.2019

Negotiable Instruments Act, 1881 – Sections 118, 138 and 139 – Drawing of presumption under, and how said presumption can be rebutted – standard of proof – while prosecution must establish its case beyond reasonable doubt, accused to prove a defence must only meet standard of preponderance of probabilities – Prinicples summarized.

Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability. The Presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden. It is not necessary for the accused to come in the witness box to support his defence.

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2019(2) SCC (Crl) 558

Rupali Devi & State of Uttar Pradesh & others

Date of Judgment:09.04.2019

Criminal Procedure Code, 1973 – Sections 178, 179 & 177 - Exceptions under Sections 178 & 179, to the "ordinary rule" contained in S.177 – Scheme explained.

Section 178 creates an exception to the "ordinary rule" engrafted in Section 17 by permitting the courts in another local area where the offence is partly committed to take cognizance. Also if the offence committed in one local area continues in another local area, the courts in the latter place would be competent to take cognizance of the matter. Under Section 179, if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take cognizance. Thus, if an offence is committed partly in one place and partly in another; or if the offence is a continuing offence or where the consequences of a criminal act result in an offence being committed at another place, the exception to the "ordinary rule" would be attracted and the courts within whose jurisdiction the criminal act is committed will cease to have exclusive jurisdiction to try the offence.

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2019 (3) MWN(Crl) 197 (SC)

Vishnu Kumar Tiwari vs. State of Uttar Pradesh

Date of Judgment:09.07.2019

Code of Criminal Procedure, 1973 (2 of 1974), Sections 173(2), 190, 200 & 202 – Final Report disclosing no prima facie case made out – Protest Petition filed by complainant – Procedure to be followed by Magistrate.

If the Magistrate was convinced on the basis of the consideration of the final Report, the statements under Section 161 of the code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter. Undoubtedly, if he treats the Protest Petition as a complaint, he would have to follow the procedure prescribed under Sections 200 & 202 of the code if the latter Section also commends itself to the Magistrate. In other words, necessarily the complainant and his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is if the material is such that it persuades the court to disagree with the conclusions arrived at by the investigating officer, cognizance could be taken under Section190(1)(b) of the code for which there is no necessity to examine the witnesses under Section 200 of the code. But as the Magistrate could not be compelled to treat the Protest Petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. If the Protest Petition fulfills the requirements of a complaint, the Magistrate may treat the Protest Petition as Complaint and deal with the same as required under Section 200 read with Section 202 of the Code.

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2019 (4) MLJ(Crl) 214

Manjit Singh vs. State of Punjab

Date of Judgment:03.09.2019

Murder- Unlawful assembly – Indian Penal Code, Section 148, 149, 302,323, 324 and 326 – Whether each of member of assembly liable for offence committed by himself as also by every other member of assembly.

The accused persons did constitute an unlawful assembly; did indulge in rioting in the Court complex with deadly weapons; and do cause grievous bodily injuries to members of the complainant party. The deceased Dalip Singh was attacked rather repeatedly by the member of this unlawful assembly and he sustained grievous injury on the head that proved fatal. The background aspects as also the conduct of the accused persons at and during the incident leaves nothing to doubt that each of the member of this assembly remains liable as also by every other member of the assembly.

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2019 (4) MLJ (Crl) 231

State of Rajasthan vs. Sahi Ram

Date of Judgment: 27.09.2019

Narcotic Drugs and Psychotropic Substances Act, 1985, sections 8 and 15 – Narcotics **– Non-Production of contraband –**Whether in case of failure to produce contraband material before Court, case of prosecution was required to be discarded.

If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the Court. At times the material could be so bulky, for instance as in the present material when those seven bags weighed two hundred and twenty three kilo grams that it may not be possible and feasible to produce the entire bulk before the Court. If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out.

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HIGH COURT CIVIL CASES

2019 (4) CTC 907

Dr.Panneerselvam & 12 others vs. Padmasini & 2 others

Date of Judgment:13.02.2019

Transfer of Property Act, 1882(4 of 1882), Section 54 – Principle of "Boundary prevails over extent" – applicability of – extent of land conveyed and boundaries of property conveyed not reliable in Sale deeds of predecessors-in-interest – Linear measurement in Sale Deed recitals alone consistent with parent source document – scope.

The Principles boundary will prevail over the extent, is applicable only when the boundaries are referred correctly and the intention of the parties to the documents from the recital lend credence to the boundaries mentioned. In this case, on facts the Title Deeds carry linear measurement, extent and boundaries. The parties do not dispute the linear measurement. In such circumstances, when linear measurements alone is consistent, the general rule that the boundary will prevail over extent is not applicable.

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2019 (3) TLNJ 476

M/s.Hateemy Sales Corporation vs. Sudhakar.R.

Date of Judgment:26.02.2019

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 25 – Petition filed for eviction on the ground of own use, act of waste and nuisance – It is the choice of the landlord to locate his business – it is not for the tenant to say that the petition premises is neither suitable nor enough for the business conducted by the landlord – no infirmity in the order passed by courts below.

It can be seen that the landlord is carrying on business in another building which is not his own. If the building is not his own building, there is nothing under Section 10(3) a(iii) which debars him to have a recourse to seek for eviction for carrying on his business. It is for the landlord to choose the building, area and the extent of the land required for his own business. The tenant cannot dictate the landlord to continue the business in the same extent as he was carrying on in the rented building.

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2019 (3) MWN(Civil) 522

R.Ranjithkumar vs. P.E.Jambulingam (Deceased) & others

Date of Judgment:05.03.2019

Practice and Procedure – B-Memo receipts issued upon encroachers of Government land – B-Memos will not contain information relating to crops raised on field – Courts to be cautious in taking note of this fact – entries in B-Memo regarding raising of crops only creates doubt in the validity of the document.

The first appellate Court has found that in B Memo receipts, the nature of the crop has been mentioned. This Court is unable to comprehend as to how such entries normally find place in B Memos. B Memo Receipts normally issued to the encroachers in the Government land and such Receipts will not contain any details of the crops raised by the concerned encroacher. It is the normal practice that in B Memos, there will not be any details of the crops raised by the parties, Such an entry itself clearly indicate that these receipts are created only to prove the case of possession.

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2019 (3)MWN (Civil) 545

Ramayee vs. Kasthuri

Date of Judgement:04.04.2019

Evidence Act, 1872 (1 of 1872), Sections 45 & 73 – Suit for Specific Performance - Execution of Sale Agreement denied – Forgery pleaded - Comparison of signatures –comparison by handwriting expert, scope of.

No doubt, under Section 73 of the Evidence Act, the Court is empowered to compare the disputed signature with the admitted Signature and to come to its independent conclusion. But it is equally well-settled law that the Court should not take up the responsibility of comparing the disputed signature with the admitted signature and the prudent course is to obtain an opinion of an expert. Those are matters of technicalities and the same would require the assistance of Technical Experts. Even a signature pattern look alike, but only of it is examined by the expert concerned, the flaws in the signature will be detected and the courts should desist from indulging in such venture. But, both the Courts below had, without referring to the disputed signatures for expert's opinion, on their own come to the conclusion that the signature were that of the 1st defendant by comparing the same with the signatures in the documents namely, Vakalathnama and the written statement, which are not related to the contemporary period.

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2019 (3) MWN(Civil) 565

E.U.Sathiyanesan (Died) & others vs. A.J.Sathiyanesan & another

Date of Judgement:12.04.2019

Evidence Act, 1872 (1 of 1872), Sections 45 & 73 – Suit for declaration and Permanent Injunction – Reliance placed on Will, to claim right to property – Allegation that subsequent Gift Deed in favour of Defendant, fraudulently created – Application seeking expert opinion to compare signatures found in Will and in disputed Gift Deed – scope of.

It is to be seen that the document Ex.X2 appears to be a filing copy of the Will and it contains the signature of the Testator, As pointed out earlier, the defendants have categorically admitted the execution of the Will. When they have not disputed the document, it should be presumed that the Will contains the genuine signature of the Testator. Hence, it is not open to the Revision Petitioner, now to contend that the document, sought to be sent for getting Expert Opinion, does not contain the admitted signatures of the Testator.

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2019 (3) MWN (Civil) 492

K.Ariyal & 4 others vs. R.Raman @ Ramasamy

Date of Judgment: 16.04.2019

Code of Civil Procedure, 1908 (5 of 1908) – Suit for declaration and Permanent Injunction – Ownership of Plaintiff denied – defence of adverse possession taken – duty to prove.

It is a settled position of law that "it is duty of the Plaintiff to prove the case " but the First Appellate Court had wrongly concluded that it is the duty of the defendants to disprove the pleadings of the Plaintiff and the entire decision of the First Appellate Court is based on the point that the Defendants failed to prove his title and possession. Though the First Appellate Court has given a finding that the Plaintiff is out of station for past 40 years, the First Appellate Court has passed an order of Injunction. In the above circumstances, it is decided that the Sub-Judge is not justified in granting a Decree of Declaration and Injunction in the favour of the Respondent/Plaintiff, holding that the Defendant have not proved their case. It is the duty of the Plaintiff to prove the case and the Defendants need not prove their case.

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2019 (3) TLNJ 411

Jaya Saravanan.S.M. vs. Joyce Mary.G.

Date of Judgment: 22.04.2019

Specific Relief Act, 1963, Section 20 – Plaintiff entered into an agreement for purchase of suit property – Sale consideration paid – sale deed not executed – suit filed for specific performance – Trial court holding agreement to be true and time was not an essence of contract – directed for a refund of sale consideration as there was a cloud on title to suit property – scope of.

The Trial Court, after holding that the agreement is true and genuine and time is not the essence of the contract, nonetheless declined to exercise the discretion under Section 20 of the Specific Relief Act on the ground that there is a cloud over the tile belonging to the respondent/defendant.

Law is quite settled that once lay out has been approved, then the place which has been earmarked for the public purpose, would vest with the local body. That is the reason why, the property in question has been classified as a Park. Secondly, once such a classification is made then it can never be changed thereafter. Therefore, the suit cannot be decreed on two counts (i) the defendant does not have the title and (ii) the public purpose for which the property is earmarked cannot be changed.

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2019 (4) LW 107

P.Ramachandran vs. Tayub Haji Ismail

Date of Judgment:30.04.2019

Tamil Nadu Buildings(Lease and Rent control)Act, Section 14(1) (b) and Tamil Nadu Buildings(Lease and Rent control) Rules 1974, Rule 12(2) – C.P.C., Order 18 Rule 4, recording of evidence. Landlord – tenant – rent control proceedings – eviction – trial – evidence – proof affidavit – acceptance – scope.

Pending R.C.O.P., the petitioner/tenant filed an interlocutory application in I.A.No.311 of 2018 under Rule 12(2) of the Tamil Nadu Buildings Lease and Rent Control Rules 1974, (hereinafter referred to 'Rules) seeking not to accept the proof affidavit filed by the respondent/Landlord and also to direct him to let in oral evidence. The Rent control authority has dismissed the said interlocutory application. Aggrieved against the said order of dismissal, Petitioner/tenant has preferred this Civil Revision Petition. The amendment introduced by amendment Act 46 of 1992 and 22 of 2002 is to minimize the work of the Court and also the time to be saved. The proof affidavit filed before the Rent control Authority is not an error and irregularity, since the Rent control authority is also the Civil court. Hence, the provision of code of Civil Procedure regarding amendment is very much applicable to the said Court.

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2019 (3) MWN (Civil) 504

Nazir Ahamed vs. A.Abdul Kaleel & another

Date of Judgment: 19.09.2019

Admissibility of Document - Registration Act, 1908 (16 of 1908), Section 17 – Suit for Permanent Injunction – Application to receive and mark document – dismissed on ground that acceptance deed sought to be marked was neither registered nor the stamped – challenged.

Even according to the Petitioner, the said document dated 22.03.2003, was entered by way of a Family Arrangement between the Petitioner and his brothers and by virtue of this document, the brothers of the Petitioner have relinquished their right in the property. This document had created a right in favour of the petitioner and extinguished the rights of the brothers of the Petitioner and

therefore, the same has to be compulsorily registered under Section 17 of the Registration Act. It is also seen that this document is unstamped.

This Court in S.Raghunatha Gounder vs. Pattappa Gounder, 2008 (2) CTC 345, has categorically held that a family arrangement which is unstamped and unregistered cannot be looked into even for collateral purposes. The reason being that there is a complete bar under Section 35 of the Stamp Act and the document itself becomes inadmissible in evidence.

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2019 (7) MLJ 675

A.Anand & others vs. A.Jeyabalan & others

Date of Judgment:26.09.2019

Civil Procedure – Advocate Commissioner noting of standing crops – Code of Civil Procedure, 1908, Order 26 Rule 9 – Application filed by the Respondents/Plaintiffs for appointment of Advocate Commissioner, to note down standing crops that were present in suit property and to file report – scope.

It is the duty of the respondent, as Plaintiffs, to establish their possession. If there are standing crops in the property, the same will be reflected in the adangal and other revenue records and there is no requirement for an Advocate commissioner to visit the property and see if there are standing crops. Such an inspection will only to amount to finding out who is in possession of the property. Just because the petitioners have raised a plea that the property is a barren land, that does not in any way justify the lower Court to appoint an Advocate Commissioner. That apart, the cloud on the title of the Respondents over the property can never be resolved with the report of an Advocate Commissioner.

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HIGH COURT CRIMINAL CASES

2019(3) MWN(Cr) DCC 55

A.E.Sivaprakasam vs. G.T.Sairam

Date of Judgment: 10.04.2019

Code of Criminal Procedure, 1973 (2 of 1974), Sections 372, Proviso to & 378(4) – Negotiable Instruments Act, 1881(26 of 1881), Section 138 – Appeal against acquittal – If, lies before Court of Sessions under Section 372 or before High Court invoking Section 378(4).

What is the role of a victim and what is the role of the complainant in a case of Private Complaint and in the context where, a Private complaint is dismissed on merits and the accused is acquitted, as against which, whether a victim can prefer appeal under Section 372, Proviso of Cr.P.C. to the concerned appellate court or he must invoke Section 378(4) of Cr.P.C., by obtaining leave to appeal before the High Court.

In Pursuant to the amendment which brought the said Proviso to the said Section 372, Cr.P.C., from 01.01.2010, the victim has got right to prefer appeal against the Order of acquittal by the trial Court only to the regular appellate court, where normally appeal would lie against the order of conviction and not before the High Court invoking Section 378(4) of the Code.

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2019 (3) MWN(Cr) 194

N.Amsaveni vs. R.Loganathan & another

Date of Judgment: 08.08.2019

Code of Criminal Procedure, 1973 (2 of 1974), Section 156(3), 200 & 202 – Power of Magistrate to direct investigation by Police under Section 156(3) – Exercise of – Stage.

Power to direct investigation by Police under Section 156 (3) of Cr.P.C., is done at the pre-cognizance stage and the enquiry or investigation ordered under Section 202 of Cr.P.C., is done a the post-cognizance stage. Once a Magistrate takes cognizance of the offence, he cannot thereafter order of an investigation under Section 156(3) of Cr.P.C.,

On receipt of a complaint, the Magistrate has the option of directing investigation under Section 156(3) of Cr.P.C., or adopt the course as provided under Section 200 of Cr.P.C.,

The Court below has completely lost sight of the rudimentary Principles of Law. The court below completely misdirected itself in ordering for an investigation under Section 156(3), Cr.P.C., after ordering for an Enquiry under Section 202 of Cr.P.C.

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2019 (2) LW (Crl) 522

Narayanamma & others vs. Chikka Vekateshaiah

Date of Judgment :13.08.2019

IPC., Sections 420, 465, 468 – Criminal Procedure Code, Sections 204, 482 – Ingredients of false document – Execution of a document pertaining to a property for which a person is not the owner by itself will not amount to execution of a false document.

The respondent is attempting to establish the offence of forgery against the petitioners on the ground that the petitioners have created false document. In order to attract the ingredients of false document, the petitioners should have either executed the document claiming themselves to be wife of the complainant or the petitioners should have altered or tampered with a document or they should have

obtained the document by practicing deception. None of these ingredients are satisfied in this case. Execution of a document pertaining to a property, for which a person is not the owner by itself will not amount to execution of a false document as defined under Section 464 of the code.

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2019 (2) LW(Crl) 619

Rathina Kumar vs. State, Rep by the Inspector of Police, Thiruchitrambalam Police Station, Thanjavur District.

Date of Judgment: 16.08.2019

I.P.C., Sections 302, 408-A, Evidence Act, Section 118 – Child Witness, Reliance, Testimony of Child witness – P.W.10, was aged about 2½ years old and at the time of his examination was aged about 9 years – Doubtful whether he witnessed occurrence – material improvements from that of the statement recorded during the course of investigation.

Now coming to the question as to the sustainability of the conviction under Section 302 I.P.C., the prosecution projected the sole testimony of P.W.10, the child witness, who is the son of the appellant/accused and the deceased. When the occurrence took place, P.W.10 was aged about 2½ years old and at the time of his examination on 06.09.2016, he was aged about 9 years. It is difficult to sustain the conviction based on the testimony of P.W.10 for the reason that the above cited contradictions elicited through the testimony of P.W.18 shows that P.W.10 made material improvements from that of the statement recorded during the course of investigation and therefore, it is highly doubtful whether he has really witnessed the occurrence at all.

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2019 (3) MWN(Cr.) DCC 85

K.Manoharan vs. N.Kamatchi Reddiar

Date of Judgment:22.08.2019

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 (b) – General Clauses Act, 1897 (10 of 1897), Section 27 – Statutory Notice of demand – Service of – "Deemed Service" – Whether presumption under Section 27 can be invoked.

It is clear that Notice was sent to the Petitioner under the care of his wife, a careful perusal of the acknowledgement also shows that there is no signature found in the acknowledgement for receipt of Notice. But the complainant has simply stated in the complaint that notice has been sent to the address, where the petitioner's wife said to have been working, and Notice has been received by them.

It is an admitted fact that letter was not addressed to the Petitioner's address, but it was sent to the office, where the Petitioner's wife was working. As already stated, even in the acknowledgement, no signature is found for receipt of the notice. In the above circumstances, this court is of the view that the notice has not been sent to the correct address of the petitioner and notice was also not served on him properly.

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2019 (3) MWN(Cr) 180

Sun Group, by its President, Kalanithi Maran vs. B.R.K.Aathithan

Date of Judgment: 30.08.2019

Code of Criminal Procedure, 1973 (2 of 1974), Section 203 – Second complaint on very same allegations – Maintainability of.

It could be seen that the learned Magistrate had duly applied his mind and on being satisfied that no prima facie case was made out against the accused, as the allegations made in the complaint would only fall under Section 499 of IPC and dismissed the Complaint and the Order has been passed upon full consideration of the entire materials available on record whether the order is correct or not is totally a different issue. Once a learned Magistrate applied his mind on the materials available on record and came to a conclusion that no prima facie case was made out against the accused and dismissed the complaint another Judicial Magistrate cannot hold that the earlier order passed by his predecessor is not valid, it virtually amounts to reviewing the earlier order, which is barred under Section 362, Cr.P.C., The only remedy available to the complainant is to challenge the same before the appropriate forum and get the order set aside. In the instant case, the Respondent/Complainant has already challenged the order by way if a Revision before this Court, but subsequently he has withdrawn the Revision and the Revision was also dismissed. In the above circumstances, after getting the Revision dismissed, the Respondent/Complainant cannot maintain another complaint on the very same fact.

The second complaint in the instant case is replica of the facts set out in the first complaint and no fresh facts have been set out in the second complaint. The core issue in both the complaints are one and the same. The second complaint also does not disclose any of the exceptional circumstances warranting the entertainment of the complaint. The earlier complaint was dismissed after full consideration of the entire materials available on record unless the Order dismissing the complaint under Section 203 of Cr.P.C. is set aside by a competent forum, a second complaint is not maintainable.

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2019 (4) MLJ (Crl) 175

Raja vs. State, represented by Inspector of Police, Sivakasi Town Police Station, Virudhunagar District.

Date of Judgment: 30.08.2019

Complaint by Public Servant – Code of Criminal Procedure, 1973 (code 1973), Sections 190 and 195 – Indian Penal Code, 1860 (Code 1860), Section 188 – For offence under Section 188 of Code 1860, Section 195(1)(a) of Code 1973 prohibits court from taking cognizance, unless complaint had been made by public servant.

For an offence under Section 188 of the Code 1860, Section 195(1)(a) of the Code 1973, Prohibits the Court from taking cognizance, unless complaint has been made by a Public servant. Though Section 190 of Code 1973, empowers the Magistrate to take cognizance of any offence upon receiving a complaint or police report or information, or upon his own knowledge, Section 195 bars the Magistrate from taking cognizance except on a complaint given by a Public servant concerned. In the absence of any such complaint by a public servant, the learned Judicial Magistrate cannot take cognizance of any offence which falls under Section 188 of Code 1860. There must be a complaint by a Public servant, who is lawfully empowered, under Section 195 of the code 1973, and it is mandatory, the non-compliance will make the entire process void ab initio.

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2019 (4) MLJ(Crl) 167

A.Koodalingam vs. M.Sangilinathan

Date of Judgment:12.09.2019

Code of Criminal Procedure, 1973, Section 311 - Recording of evidence – Cross-cases –Whether expert opinion placed before trial court in cross case and was yet to be marked could be allowed to be marked in instant case.

Both criminal cases relate to the same transaction between the parties. The allegation made in one case is taken as a defence in the other case. Therefore, it squarely falls within the criteria of "cross-cases". The expert opinion and the materials that were subjected to expert opinion has already been filed in summary trial case and it is yet to reach the status of "evidence".

In facts of the present case, the defence taken by the Respondent and the evidence that is going to be relied upon by him to substantiate his defence is the same evidence, which is going to be relied upon by the prosecution to prosecute the Petitioner in Summary trial case. For this purpose, it is not necessary to record the evidence of the same witness and mark the same documents separately in both the cases.

The two cases are now pending before the same court. The proper course that can be adopted by Learned Judicial Magistrate, would be to try both the cases together, but not to consolidate it. The evidence should be recorded separately in both the cases, one after other, except to the extent that witnesses, who are common and documents, which are common to both the cases, can be examined/marked in one case and their evidence can be read as evidence in the other case. By adopting to this procedure, no prejudice will be caused to the Petitioner and the court below can avoid duplication of the same set of evidence.

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2019 (6) CTC 14

Subbiah Konar vs. State

Date of Judgment:18.09.2019

Code of Criminal Procedure, 1973, (2 of 1974), Sections 219, 220 & 212(2) – Indian Penal Code, 1860 (45 of 1860), Sections 71 & 406 – Multiple counts of Criminal breach of trust – whether triable in single trial – accused, conducting chit scheme, disappeared without repaying depositors – 30 counts of Criminal breach of trust qua 30 victims alleged – whether single trial maintainable for 30 counts of offences under Section 406, IPC.

However, Section 212(2), Cr.P.C., carves out an exception for the offence of Criminal breach of Trust (Section 406, IPC) and dishonest misappropriation of money (Section 403, IPC genus), Monies appropriated by the accused either solely or with others, via Criminal breach of trust or misappropriation, for a period of one year, can be consolidated, the gross amount determined and the gross amount so determined, will be construed as one offence. That is why, in the final report, the police had consolidated the amounts for one year, from 04.04.2002 to 03.04.2003 at Rs.1,80,000 and for the period from 04.04.2009 to 06.10.2003 at Rs.1,20,000 and two charges were framed by the Trial Court under Section 406, IPC. Unlike Section 219 & Section 212, Cr.P.C., does not contemplate two trials for each consolidated offence.

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2019 (2) LW (Crl) 540

Vellapandi vs. State through The Inspector of Police, Srivaikundam Police Station, Tuticorin District.

Date of Judgment:24.09.2019

IPC Sections 84, plea of insanity, 302, 341, 506(ii) – Murder – Plea of insanity by accused – burden of proof whether discharged.

In cases where exception under Section 84, of the Indian Penal Code is claimed, the Court has to consider, whether at the time of commission of the offence, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act. The burden of proving the existence of circumstances to bring the case within the purview of Section 84, lies upon the accused under Section 105 of the Indian Evidence Act. However, the proof that is expected is only preponderance of probabilities, the accused has to demonstrate that the severe mental disability incapacitated him from understanding the nature of the act that was committed by him at the time of incident. This disability will have to be assessed by a Multi Disciplinary Team of qualified professionals and their report can be taken into consideration.

In the present case, we are of the considered view that there are absolutely no materials to show that the appellant suffered from mental disorder at the time of the incident and the appellant has not discharged the burden as required under Section 105 of the Indian Evidence Act, 1872.

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2019 (2) LW (Crl) 637

Bala Subramanian vs. Muthukumar @ Ajith Kumar & another

Date of Judgment: 26.09.2019

Juvenile Justice (Care and Protection of Children) Rules, (2007), Rules 12, 12(3) –Juvenile – who is – procedure for determination of age – Court below has not taken any efforts to verify the school certificate, if any given to the first respondent – court has taken into consideration the birth certificate procedure not in accordance with rule 12.

The procedure to be followed in determination of age has been specifically provided under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Rule 12(3) of the Juvenile Justice(Care and Protection of Children) Rules, 2007.

On a careful reading of the order, it can be seen that the court below has not taken any efforts to verify the school certificate, if any given to the first respondent. The procedure which has been extracted hereinabove clearly states that this certificate will have to be first scrutinized and only in the absence of the same, the birth certificate can be taken into consideration. However, the Court below has straight away taken into consideration the birth certificate that was issued to the first respondent. The Court below has also taken into consideration the medical report given by the Medical officer, who has determined the age of the first respondent. With these two materials, the Court below has come to a conclusion that the first respondent was aged about 17 years and 10 months as on the date of the alleged occurrence. The court is of the considered view that the procedure followed by the court below is not in accordance with Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

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